



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2011-0919; FRL-9913-92-Region 6]

Approval and Promulgation of Implementation Plans; Texas;

Conformity of General Federal Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of Texas on October 28, 2011. These revisions remove the State general conformity provisions from the SIP as allowed by the 2005 amendments to the Clean Air Act (Act or CAA). Upon the effective date of this final action, the EPA Federal rules will govern conformity of general Federal actions within the State of Texas. The revisions also update the narrative portion of the SIP. This action is being taken in accordance with sections 110 and 176 of the Act.

DATES: This rule is effective on **[Insert date 60 days after date of publication in the Federal Register]** without further notice, unless EPA receives relevant adverse comment by **[Insert date 30 days after date of publication in the Federal Register]**. If EPA receives such comment,

EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2011-0919, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions.

- E-mail: Jeffrey Riley at *riley.jeffrey@epa.gov*.

- Mail or delivery: Mr. Guy Donaldson, Chief, Air Planning Section (6PD-L), Environmental Protection Agency, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733.

Instructions: Direct your comments to Docket ID No. EPA-R06-OAR-2011-0919. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information through *http://www.regulations.gov* or e-mail, if you believe that it is CBI or otherwise protected from disclosure. The *http://www.regulations.gov* website is an “anonymous access” system, which means that EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment along with any disk or CD-ROM submitted. If EPA cannot read your comment due to technical difficulties and

cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment with the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below or Mr. Bill Deese at 214-665-7253.

FOR FURTHER INFORMATION CONTACT: Jeffrey Riley, (214) 665-8542,
riley.jeffrey@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document wherever “we,” “us,” or “our” is used, we mean the EPA.

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I. Background

A. What is General Conformity?

General Conformity is a requirement of section 176(c) of the CAA. Congress recognized that actions taken by Federal agencies could affect a State, Tribal, or local agency's ability to attain and maintain the national ambient air quality standards (NAAQS). Under General Conformity, any action by the Federal government cannot: cause or contribute to any new violation of any standard in any area; interfere with provisions in the applicable SIP for maintenance of any standard; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard, any required interim emission reductions, or any other milestones, in any area. The CAA Amendments of 1990 clarified and strengthened the provisions in section 176(c). EPA promulgated General Conformity SIP regulations on November 30, 1993 (58 FR 63214) and required states to adopt and submit a General Conformity SIP for approval by EPA (See 40 CFR Part 51, subpart W (sections 850 to 860 (1993))).

B. General Conformity Affected by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU)

On August 10, 2005, Congress passed the SAFETEA–LU Act that, among other things, amended the CAA to eliminate the requirement for States to adopt and submit General Conformity SIPs. On April 5, 2010 (75 FR 17254), EPA updated the General Conformity SIP Rules to, among other things, be consistent with the SAFETEA–LU by eliminating the Federal regulatory requirement for states to adopt and submit general conformity SIPs, instead making submission of a general conformity SIP a state option. See 40 CFR 51.851.

C. Prior Texas General Conformity SIP Revision Action

On March 11, 1998 (63 FR 11833), EPA approved Title 30 Texas Administrative Code (TAC) section 101.30, *Conformity of General and State Actions to State Implementation Plans*. Texas' rule mirrored the federal requirements in 40 CFR Part 93, Subpart B and Part 51, Subpart W, and specifically referenced the 1993 Federal General Conformity SIP rule. On July 23, 2010 (75 FR 43062), EPA made a ministerial correction to the table in 40 CFR 52.2270(c) to reflect the correct title of the EPA approved regulation in the Texas SIP. The ministerial correction applied to the table entry for Section 101.30, revising the title to “*Conformity of General Federal Actions to State Implementation Plans*”.

D. State Submittal

On October 28, 2011, the State of Texas submitted SIP revisions consisting of a repeal of section 101.30, *Conformity of General Federal Actions to State Implementation Plans*, in 30 TAC Chapter 101, General Air Quality Rules, Subchapter A, General Rules, as well as corresponding revisions to the narrative portion of the SIP to eliminate references to repealed federal rules. The repeal of the state rule is also intended to eliminate the need for future state rule revisions as a result of amendments to federal regulations.

II. EPA's Evaluation

We have reviewed Texas' submittal to assure consistency with the current Clean Air Act, as amended by SAFETEA-LU, and EPA regulations governing state procedures for general conformity (40 CFR Part 93, Subpart B and 40 CFR 51.851). The October 28, 2011 revisions, upon approval by EPA, removes §101.30, “*Determining Conformity of General Federal Actions to State or Federal Implementation Plans*,” from the SIP and revises the SIP Narrative. With the

removal of §101.30 from the SIP, the federal rules in 40 CFR Part 93, Subpart B will directly govern conformity of general federal actions in the State of Texas. 40 CFR Part 93, Subpart B continues to subject certain federal actions to general conformity requirements without the need for identical state rules and SIPs. Therefore, repealing the state rule will not impact continuity of the general conformity program in Texas, and consequently meets the requirements of section 110(l). Federal agencies will only need to comply with the EPA General Conformity Rule requirements in 40 CFR Part 93, Subpart B. In addition, Texas' October 28, 2011 SIP revision meets the requirements set forth in section 110 of the CAA with respect to adoption and submission of SIP revisions.

III. Final Action

We are taking direct final action to approve revisions to the Texas SIP submitted on October 28, 2011, that pertain to removal of §101.30, *“Determining Conformity of General Federal Actions to State or Federal Implementation Plans,”* from the SIP and update the narrative portion of the SIP. The approval of Texas' conformity SIP revisions will align the Texas SIP with the current Clean Air Act, as amended by SAFETEA-LU, and the most recent EPA regulations governing state procedures for general conformity.

EPA is publishing this rule without prior proposal because we view this as a non-controversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the SIP revision if relevant adverse comments are received. This rule will be effective on insert date 60 days after date of publication in the Federal Register without further notice unless we receive relevant adverse comment by insert date 30 days after

date of publication in the Federal Register]. If we receive relevant adverse comments, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so now. Please note that if we receive relevant adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United

States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication of this document in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: July 7, 2014.

Ron Curry,

Regional Administrator, Region 6.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS – Texas

2. In § 52.2270 is amended by:

a. In paragraph (c), the table titled “EPA Approved Regulations in the Texas SIP” is amended by removing the entry for “Section 101.30, Conformity of General Federal Actions to State Implementation Plans”; and

b. In paragraph (e) the second table titled “EPA Approved Nonregulatory Provisions and Quasi-Regulatory Measures in the Texas SIP” is amended by adding an entry at the end for “Conformity with the National Ambient Air Quality Standards”.

The addition reads as follows:

§ 52.2270 Identification of plan.

* * * * *

(e) * * *

EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
* * * * *				
Conformity with the National Ambient Air Quality Standards	Statewide	10/28/2011	[Insert date of <u>Federal Register</u> publication] [Insert <u>Federal Register</u> citation]	The General Conformity SIP is removed from the Texas SIP; the federal rules at 40 CFR Part 93, subpart B apply now.

[FR Doc. 2014-16826 Filed 07/17/2014 at 8:45 am; Publication Date: 07/18/2014]